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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/569,204	02/23/2006	Kenji Ando	0445-0363PUS1	1718
2292 7590 07/28/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER SALVATORE, LYNDIA				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
07/28/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/569,204

Applicant(s)

ANDO ET AL.

Examiner

Lynda M. Salvatore

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 5,9 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,8,10 and 15 is/are rejected.
- 7) ☒ Claim(s) 3,4,7,8 and 11-14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-083)
Paper No(s)/Mail Date 2/23/06, 5/25/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group 1, claims 1-4, 6-8 and 10-15 in the reply filed on 4/24/08 is acknowledged. The traversal is on the ground(s) that the search of the article claims together with the method claims can be made without a serious burden on the Examiner. This is not found persuasive because the search required for the method claims is not coextensive with the search required for the article claims.

The requirement is still deemed proper and is therefore made FINAL.

However, in the event that the article claims are found allowable, pursuant to the procedures set forth in MPEP § 821.04(B) the process of making or using an allowable product, previously withdrawn from consideration as a result of a restriction would be rejoined and fully examined for patentability under 37 CFR 1.104 provided that the process claims includes all the limitations of a claim that is allowable.

Claims 5, 9 and 16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected method, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-2, 6,8,10 and 15 are rejected under 35 U.S.C. 102(a) as being anticipated by Jarpenberg et al., US 2003/0144643.

The published patent application issued to Jarpenberg et al., teach orienting multi-strand elastic filaments between two non-woven layers (abstract and section 0012). Jarpenberg et al., teach that the elastic strands are fixed at number locations along the at least one of the two non-woven substrate layers (section 0012). With regard to the limitation regarding the plurality of folds, said non-woven substrate layers are gatherable (section 0012). Such gathering would produce the claimed plurality of folds (figure 4). Jarpenberg et al., teach thermal bonding to fix the elastic multi-stands to the gatherable non-woven substrates (section 0047).

Allowable Subject Matter

4. Claims 3-4, 7 and 11-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Specifically, the prior art of record fails to teach or fairly suggest the limitations set forth in the above claims. An art search did not produce any substantial art for which to base a rejection and presently there is no motivation to combine references to form an obviousness type rejection.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lynda Salvatore/
Primary Examiner
Art Unit 1794
7/18/08